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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAIIAN ART NETWORK, LLC and VICNENT K. TYLOR, Plaintiffs, vs. MOKU`AINA PROPERTIES, LLC, a Hawaii Limited Liability Company; CHAD WATERS; JOHN DOES 1-10; Etc., Defendants.	Case No. 1:11-cv-00723 DAE-RLP (Copyright Infringement; DMCA) **DEFENDANTS MOKU`AINA PROPERTIES, LLC AND CHAD WATERS' ANSWER TO COMPLAINT FILED DECEMBER 1, 2011 [Doc #1]; DEMAND FOR JURY TRIAL; CERTIFICATE OF SERVICE**

DEFENDANTS MOKU`AINA PROPERTIES, LLC AND CHAD WATERS' ANSWER TO COMPLAINT FILED DECEMBER 1, 2011 [Doc #1]

Defendants MOKU`AINA PROPERTIES, LLC and CHAD WATERS (individually "Defendant Moku`aina" and "Defendant Waters", and collectively just “Defendants”), by and through their attorneys undersigned, submit their answer to the Complaint filed herein by Plaintiffs HAWAIIAN ART NETWORK, LLC and VINCENT K. TYLOR (individually “Plaintiff Art Network” and “Plaintiff Tylor” and collectively just “Plaintiffs”) on December 1, 2011 (“Complaint” and “Doc #1”) as follows.

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Defendants admit the allegations set forth in paragraphs 3 and 4 of the Complaint.

3. Defendants deny the allegations set forth in paragraphs 7, 14, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, and 41 of the Complaint.

4. Defendants are without sufficient knowledge or information to either admit or deny the allegations set forth in paragraphs 1, 2, 5, 9, 10, 11, 13, 17, and 22 of the Complaint.

5. Defendants neither admit nor deny the allegations set forth in paragraph 6 of the Complaint as the Complaint speaks for itself.

6. Defendants neither admit nor deny the allegations set forth in paragraph 8 of the Complaint as these allegations are of law and not of fact.

7. With respect to the allegations set forth in paragraph 12 of the Complaint, Defendants admit that the four photographs depicted in Exhibit "B" to the Complaint were used on Defendant Moku'aina's websites, deny they were used in the same form depicted in Exhibit "B" to the Complaint, deny the photographs were used on Defendant Moku`aina's website in late 2010, admit that the screen shots depicted in Exhibit "C" to the Complaint appear to have been taken from Defendant Moku'aina's websites, and are without knowledge or information sufficient to admit or deny the remaining allegations therein.

8. With respect to the allegations set forth in paragraphs 15 and 16 of the Complaint, Defendants admit that the Plaintiffs, through their counsel, made demand upon Defendant Moku'aina to cease and desist from using any of Plaintiffs' copyrighted works and that Defendants pay Plaintiffs the amount of $21,000 to settle Plaintiffs copyright claims against Defendants, and that Defendants responded to the demand the contents of which are protected pursuant to Rule 408, FRE, and are without knowledge or information sufficient to admit or deny the remaining allegations therein.

9. With respect to the allegations set forth in paragraph 20 of the Complaint, Defendants admit that Defendant Moku`aina has done business in the State of Hawaii through online booking of rental properties via, *inter alia*, links to

and from Moku`aina's websites, and Defendants deny the remaining allegations therein.

10. With respect to the allegations set forth in paragraphs 21 and 35 of the Complaint, Defendants incorporate by reference the respective answers given in response to the allegations incorporated by Plaintiffs in these two paragraphs.

11. All allegations set forth in the Complaint not specifically admitted hereinabove are denied.

THIRD DEFENSE

12. Defendants gives notice that they reserve the right to raise the defense of lack of copyright registration or fatally defective copyright registration. To the extent that the copyright registrations relied upon by Plaintiffs are inapplicable or fatally defective, this Court lacks jurisdiction over the subject matter of this action.

FOURTH DEFENSE

13. Defendants gives notice that they reserve the right to raise the defense that one or both of the Plaintiffs lack of standing to bring the alleged claims or that Plaintiffs' claims are otherwise non-judiciable. To the extent that one or both of the Plaintiffs lack standing to bring the alleged claims, or the claims are otherwise non-judiciable, this Court lacks jurisdiction over such claims.

FIFTH DEFENSE

14. Defendants give notice that they reserve the right to raise the defenses of insufficiency of process, insufficiency of service of process, and failure to join an indispensable party.

SIXTH DEFENSE

15. Defendants give notice that they reserve the right to raise the defenses of consent, waiver, release, abandonment, laches, acquiescence, recession, abrogation, accord and satisfaction, license, implied license, and set-off or off-set.

SEVENTH DEFENSE

16. Defendants give notice that they reserve the right to raise the defenses of unconscionability, illegality, mistake, estoppel, copyright misuse, fraud on the Copyright Office, unclean hands, entrapment, enticement and honeypotting.

EIGTH DEFENSE

17. Defendants give notice that they reserve the right to raise the defense that Plaintiffs abandoned any copyright inhering in the subject photographs and/or that the subject photographs are in the public domain.

NINTH DEFENSE

18. Defendants give notice that they reserve the right to raise the defenses of fair use and/or *de minimus* infringement.

TENTH DEFENSE

19. Defendants give notice that they reserve the right to raise the defense of innocent intent.

ELEVENTH DEFENSE

20. If Plaintiffs were injured or damaged as alleged in the Complaint, such injuries or damages were proximately caused by acts or omissions of Plaintiff and/or its affiliates, or others outside the control of Defendants, and not by the acts or omissions of Defendants.

TWELFTH DEFENSE

21. Plaintiffs have an adequate remedy at law and injunctive relief is not warranted in the circumstances of this case.

THIRTEENTH DEFENSE

22. Plaintiffs failed to mitigate their damages and accordingly may be barred, in whole or in part, from recovery herein.

FOURTEENTH DEFENSE

23. Plaintiffs have failed to set forth its claims with sufficient particularity to allow Defendants to raise all appropriate defenses, and therefore, Defendants reserve their right to amend or supplement this answer with additional affirmative defenses.

FIFTEENTH DEFENSE

24. Defendants give notice that they reserve the right to raise any and all other affirmative defenses permitted under Rule 8(c), *Federal Rules of Civil Procedure*, not specifically pled hereinabove the applicability of which may be disclosed after further investigation and/or discovery.

WHEREFORE, having answered fully, Defendants MOKU`AINA PROPERTIES, LLC and CHAD WATERS pray that the Complaint be dismissed, with prejudice, and that they be awarded its costs, reasonable attorneys' fees, and such other relief as the Court deems appropriate.

DATED: Honolulu, Hawaii, January 10, 2012.

BADGER ARAKAKI LLLC
SETH M REISS, AAL, ALLLC

/s/ Seth M. Reiss

SCOTT C. ARAKAKI
SETH M. REISS

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